IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Prem Narayan Tailor Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.3789/2002.

Under Article 226 of the Constitution of India.

Date of Order :: 24th August, 2006.

PRESENT

HON'BLE MR JUSTICE MOHAMMAD RAFIQ

Mr RS Saluja, for the petitioner.
Mr Rameshwar Dave, Dy. G.A., for the respondents.

BY THE COURT:

In the present writ petition, the petitioner has prayed for a direction to the respondents to consider his case for regularisation on the post of LDC as per Rule 25(10) of the Rajasthan Subordinate Services Ministerial Staff Rules, 1957 (for short the Rules of 1957) and grant him all consequential benefits flowing therefrom.

Earlier to filing of the present petition, the petitioner has also filed S.B. Civil Writ petition No. 2197/93 which was allowed by this Court vide

judgment dated 26.5.95 with the following directions:

> "The petition is allowed. The respondents are directed to pay to the petitioner minimum pay in the lowest pay scale applicable to the post of regular Ledger Keeper/LDC from the date of filing of the petition and consider regularization of his services in the light of directions made in order being passed today in S.B.C.Writ Petition No. 3453/94 (Anskalin Samaj Kalyan Sangh, Banswara Vs. State & ors) decided on May 26, 1995. The relief will be given only if the petitioner was in service on the date of filing of the petition. No order as to costs."

In view of the aforesaid directions of this Court, the respondents started paying regular pay on the post of L.D.C to the petitioner. However, they did not take any decision regarding regularization of his service on the post of Ledger Keeper / L.D.C. Feeling aggrieved by such non decision, the petitioner filed the present petition.

I have heard the learned counsel for the petitioner Mr RS Saluja and Shri Rameshwar Dave, learned Dy. G.A appearing for the respondents.

Learned counsel for the petitioner has argued

that the petitioner has put in service for more than 15 years on the post of L.D.C. and still the respondents have not taken any steps to regularize his services on such post. He has relied on Rule 25 (10) of the Rules of 1957 which provides for regularisation of services of employees appointed between 1.1.1985 and 31.3.1990 and were still in service when said sub-rule was introduced subject to their qualifying performance test.

Learned counsel for the petitioner further argued that respondents were obliged in law to take a positive decision in the matter of his regularization in compliance of earlier decision of this Court in its judgment dated 26.5.95.

On the other hand, Shri Rameshwar Dave, learned Dy. Government Advocate argued that the petitioner was initially appointed as a semi-skilled employee on muster roll basis. He was for some time asked to work in Accounts Section to assist LDC who was looking after the work of Ledger Keeper. It has been argued that case of the petitioner for regularisation of his service has been considered in compliance of order earlier passed by this Court. He, however submits, since there is no sanctioned

post of Ledger Keeper available in the Department, services of the petitioner could be regularized. As regards Rule 25(10) of the Rules of 1957, the learned Dy. Government Advocate, has argued that the case of the petitioner does not fall within the purview of the said rule because he was never appointed on the post of LDC; his appointment was rather made as daily wager on muster roll. Availability of sanctioned post and budgetary provisions therefor are condition precedent for regularization of service of an employee, therefore, unless these two conditions are fulfilled, no decision can be taken regarding regularization of the petitioner.

I have given my thoughtful consideration to the arguments advanced by both the learned counsel and perused the record.

It would be evident from operative part of the judgment earlier passed by this Court that the writ petition filed by the petitioner was disposed of with direction to the respondents to grant minimum pay in the lowest pay scale applicable to the post of regular Ledger Keeper/ LDC from the date of filing of the writ petition and consider his case

for regularization of services in the light of directions given in the judgment dated 26.5.95 passed in Anskalin Samaj Kalyan Sangh, Banswara Vs. State & ors. Thus, the direction was only limited in the sense that the respondents were required to consider his case for regularization.

The learned counsel for the petitioner has invited my attention to the letter No. Zone-Bhilwara/2005-06/Litigation/9118 to 19 dated 7.11.2005 addressed by Superintending Engineer to Additional Chief Engineer (Ruler) regarding pendency of the present writ petition stating therein that the decision on the question of regularization of the petitioner in compliance of the judgment dated 26.5.95 would be taken only after decision of the present writ petition. He has argued that the respondents have not taken any decision on the question of regularization only because of pendency of the writ petition.

It is not in dispute that the petitioner is working with the respondents presently for last two decades now. When already in similar writ petition filed by the same petitioner, this court directed the respondents to consider his case for

regularisation, respondents cannot defer their decision on this question only on account of pendency of the present writ petition. Mere pendency of the writ petition will not preclude the respondents from taking a decision on the question of regularization. The respondents, are therefore directed to take a final decision on the question of regularization of the petitioner's services in the light of earlier direction issued by this Court within a period of two months from the date of service of copy of this judgment.

With the aforesaid observations, the present writ petition is disposed of. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.

/gandhi